

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

DWAINE GOVAN, ANTHONY
RICHARDSON, JR, and ANTHONY
RICHARDSON, SR.

Plaintiffs,

vs.

CITY OF McINTYRE, DEPUTY ZIM
STEELE, and DEPUTY KYLE McDADE

Defendants.

Civil Action No. 5:16-CV-503-CAR

ANSWER OF THE CITY OF McMINTYRE and DEPUTY ZIM STEELE

Come Now The City of McIntyre, and Officer Zim Steele (hereinafter “these defendants”), and file this answer to Plaintiffs’ complaint, respectfully showing the Court the following:

FIRST DEFENSE

Plaintiffs’ Complaint fails to state a claim against these defendants upon which relief can be granted.

SECOND DEFENSE

The City of McIntyre and the other named defendants, to the extent that they are named in their official capacities, are entitled to sovereign, municipal, official, absolute, and governmental immunity.

THIRD DEFENSE

Officer Zim Steele is entitled to official and qualified immunity.

FOURTH DEFENSE

Officer Zim Steele did not act or fail to act in any manner which caused the deprivation of a constitutional or federally protected right of plaintiff.

FIFTH DEFENSE

Answering the numbered paragraphs of plaintiffs' complaint, these defendants answer as follows:

1.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

2.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

3.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

4.

Admitted.

5.

Admitted on information and belief.

6.

Admitted.

7.

Admitted.

8.

Admitted.

9.

Admitted.

10.

Admitted.

11.

Admitted.

12.

Admitted.

13.

Admitted.

14.

Admitted.

15.

Admitted.

16.

Admitted.

17.

Admitted.

18.

Admitted.

19.

Admitted.

20.

These Defendants admit that Officer Steele asked both men about their destination but deny the remainder of the allegations contained in paragraph 20 as pled.

21.

Admitted on information and belief.

22.

Denied.

23.

Denied.

24.

Denied.

25.

Denied as pled.

26.

These Defendants admit that Officer Steele ordered Mr. Richardson to turn off the van and exit the vehicle.

27.

Admitted.

28.

These Defendants admit that both Plaintiffs complied with Officer Steele's orders but denies the remainder of the allegations contained in paragraph 28 as pled.

29.

Denied.

30.

Admitted.

31.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

32.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

33.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

34.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

35.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny

the same.

36.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

37.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

38.

Admitted.

39.

Admitted.

40.

Admitted.

41.

Admitted.

42.

These Defendants admit that Deputy McDade walked the drug dog around the van but deny that McDade and Steele later falsely claimed that the drug dog alerted to the presence of drugs.

43.

These Defendants admit that Govan stated that he did not believe that it was possible for the drug to alert to the presence of drugs in the van.

44.

Denied as pled.

45.

Admitted.

46.

Admitted.

47.

These defendants admit that the decision was made to impound the vehicle and seek as search warrant but they deny that the Plaintiffs were taken to the City of McIntyre Jail as the City of McIntyre does not own or operate a jail or holding facility. The Plaintiffs were taken to a Wilkinson County facility.

48.

Admitted.

49.

Admitted.

50.

Admitted.

51.

Admitted.

52.

Admitted.

53.

Denied.

54.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

55.

These defendants are without sufficient information or knowledge to form a belief as to the truth of the averments contained therein, and can neither admit nor deny the same.

56.

These Defendants admit that a search of the van in question took place while Plaintiff were held at the Wilkinson County Jail but deny the remainder of the allegations contained in Paragraph 56 of Plaintiffs' Amended Complaint as pled.

57.

Admitted.

58.

Admitted.

59.

Admitted.

60.

Denied.

61.

Denied.

62.

Answering paragraph 62, defendants incorporate their previous responses to

paragraphs 1-61 as if fully set forth herein.

63.

Denied.

64.

Denied.

65.

Denied.

66.

Denied.

67.

Denied.

68.

Answering paragraph 68, defendants incorporate their previous responses to paragraphs 1-67 as if fully set forth herein.

69.

Admitted.

70.

Admitted.

71.

Denied.

72.

Denied.

73.

Denied.

74.

Denied.

75.

Denied.

76.

Denied.

77.

Denied.

78.

Denied.

79.

Denied.

80.

Admitted.

81.

Answering paragraph 81, defendants incorporate their previous responses to paragraphs 1-80 as if fully set forth herein.

82.

Denied.

83.

Admitted.

84.

Admitted.

85.

Admitted.

86.

Denied.

87.

Denied.

88.

Denied.

89.

Denied.

90.

Denied.

91.

Answering paragraph 91, defendants incorporate their previous responses to paragraphs 1-90 as if fully set forth herein.

92.

Denied.

93.

Denied.

94.

Denied.

95.

Denied.

96.

Answering paragraph 96, defendants incorporate their previous responses to

paragraphs 1-95 as if fully set forth herein.

97.

Denied.

98.

Denied.

99.

Denied.

100.

Denied.

101.

Answering paragraph 10, defendants incorporate their previous responses to paragraphs 1-100 as if fully set forth herein.

102.

Admitted.

103.

Admitted.

104.

Denied as pled.

105.

Denied.

106.

Denied.

107.

Answering paragraph 107, defendants incorporate their previous responses to

paragraphs 1-106 as if fully set forth herein.

108.

Denied.

109.

Denied.

SIXTH DEFENSE

Punitive damages are not applicable in this matter based on the United States Constitution and the Constitution of the State of Georgia and other applicable law.

SEVENTH DEFENSE

Any averments contained in plaintiffs' complaint not specifically admitted, or for want of sufficient information neither admitted nor denied, are hereby denied.

WHEREFORE, having fully answered, these defendants pray as follows:

- (a) That plaintiffs' complaint be dismissed;
- (b) That judgment be entered in favor of these defendants for all costs of this action, including reasonable attorney's fees pursuant to 42 USC §1988;
- (c) That these defendants have trial by jury as to any factual issues;
- (d) That these defendants have such other and further relief as the Court deems appropriate under the circumstances of this case.

This 12th day of September, 2017.

/s/ Thomas F. Richardson
Thomas F. Richardson
Georgia Bar No. 604325

/s/ J. Travis Hall
J. Travis Hall
Georgia Bar No. 357464
Attorneys for the Defendants

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CERTIFICATE OF SERVICE

This is to certify that I have this day served foregoing upon counsel for plaintiffs, by depositing a copy of the same in the United States mail with sufficient postage affixed thereon to ensure delivery to:

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This 12th day of September, 2017.

/s/ J. Travis Hall
J. Travis Hall